

Attachment A

In The Matter Of:

AHERF v.
PRICEWATERHOUSECOOPERS, LLP

ROBERT BERLINER

February 16, 2005

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 2 you reviewed and I can direct your attention to
 3 page 2.
 4 A. Mr. Kite.
 5 Q. Yes, Steven Kite?
 6 A. Yes.
 7 Q. Have you reviewed the expert report
 8 of Mr. Regan?
 9 A. No, I have not.
 10 Q. Do you know who Mr. Regan is?
 11 A. Yes, I do.
 12 Q. Were you aware that he was retained
 13 as an expert in this matter?
 14 A. I was.
 15 Q. By Jones Day?
 16 A. Correct.
 17 Q. What knowledge do you have about
 18 the opinions expressed by Mr. Regan?
 19 A. None whatsoever.
 20 Q. You don't know whether he agrees
 21 with you or disagrees with you?
 22 A. I assume if he disagreed with me I
 23 would have heard about it, but I don't know for
 24 certain.
 25 Q. Have you talked with lawyers from

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 2 Jones Day about any opinions expressed by
 3 Mr. Regan?
 4 A. No.
 5 Q. Have you reviewed the expert report
 6 of Mr. Wallace, James Wallace?
 7 A. No.
 8 Q. Do you know who he is?
 9 A. No, I don't.
 10 Q. When were you first retained in
 11 this matter, Mr. Berliner?
 12 A. I was retained in this matter in
 13 2000.
 14 Q. So four years before you rendered
 15 your first expert report?
 16 A. A little over four years, yes.
 17 Q. You are being paid by the hour for
 18 your work on this case, is that right, sir?
 19 A. That's correct.
 20 Q. What is your hourly rate?
 21 A. Mine?
 22 Q. Yes.
 23 A. 675 an hour.
 24 Q. Then I gather there's been a team
 25 of people who have worked with you who have also

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 2 billed for their time, is that right?
 3 A. Correct.
 4 Q. Do you know what the total number
 5 of hours is that you've spent on this project,
 6 sir?
 7 A. Yes, I do.
 8 Q. How many hours is that?
 9 A. Approximately 10,000.
 10 Q. How many hours do you know have the
 11 people who have worked with you spent?
 12 A. Yes, I do.
 13 Q. How many hours is that?
 14 A. Approximately 8800.
 15 Q. You said just now that you believed
 16 you spent 10,000 hours, do you mean 1,000 or
 17 10,000?
 18 A. I thought the question was how many
 19 hours of my team in total, 10,000.
 20 Q. Of those hours, about how many
 21 hours did you personally spend on this project?
 22 A. I spent approximately through the
 23 end of January, approximately 1200 hours.
 24 MR. RYAN: Let me mark this please
 25 as Exhibit 2800.

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 2 MR. JONES: Before do you that, I
 3 was told that at the last deposition we were
 4 moving into the 6000s as a convention for
 5 experts and I was given the number that Ms.
 6 Meaden left off with if that's what you would
 7 prefer, if you don't prefer that that's fine. I
 8 was told that she left off at 6008, that we were
 9 in expert exhibits at this point.
 10 MR. RYAN: Sure, let me mark this
 11 as 6009.
 12 (Document, marked Exhibit 6009
 13 for identification.)
 14 Q. Do you recognize Exhibit 6009,
 15 Mr. Berliner?
 16 A. It appears to be a billings
 17 rendered in this case.
 18 Q. Is it the case then that through
 19 January 12, 2005 your firm has billed
 20 \$2,870,000?
 21 A. That's correct.
 22 Q. Who is paying your bill, sir?
 23 MR. JONES: Object to foundation.
 24 A. I assume the Unsecured Creditors
 25 Committee is paying the bills.

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 2 Q. It comes out of the amount that
 3 otherwise would be distributed to creditors of
 4 AHERF to your understanding, is that right?
 5 MR. JONES: Same objection.
 6 A. That's right.
 7 Q. I see toward the back of this
 8 exhibit about four pages from the end, three
 9 pages from the end, it seems that the first date
 10 on which you billed time on this matter is in
 11 August 2000? I'm on the third to last page.
 12 A. I believe that's correct, but on my
 13 copy that doesn't appear on the third from last
 14 page.
 15 Q. I apologize. That is consistent
 16 with the time that you believe that you first
 17 started to work on this matter?
 18 A. That's correct.
 19 Q. Who are the members of the team at
 20 the Marks Paneth & Shron firm who worked with
 21 you on this matter?
 22 A. The principal member of the team
 23 was Stuart Zatkow who was assigned to this
 24 engagement from the outset and the other senior
 25 members of the team were Bill Holmes and to a

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 2 members of your team whose names I saw in these
 3 documents, I apologize but all I have is their
 4 last names. Who is Liz Atlas?
 5 A. Atlas?
 6 Q. Yes.
 7 A. I don't know, she must be a very
 8 junior member who did some more routine tasks.
 9 Q. How about Biddick?
 10 A. Biddick is a senior fellow but he
 11 would have had very little input. Probably in
 12 the very early stages he helped reviewing some
 13 of the SEC transcripts of depositions, I think
 14 he reviewed three at the very outset.
 15 Q. How about Carson?
 16 A. Carson again would have been a very
 17 junior person who I had no contact with.
 18 Q. How about Corchia?
 19 A. Corchia is my administrative
 20 assistant.
 21 Q. How about Friedler?
 22 A. Friedler is a supervisor in our
 23 litigation services department and we would have
 24 assigned some specific task or tasks to him.
 25 Q. How about Goldberg?

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 2 much lesser extent John Barron.
 3 Q. What did Mr. Zatkow do to assist
 4 you in this engagement?
 5 A. He reviewed documents, he helped
 6 draft the expert reports and he and I batted
 7 around issues and discussed the information that
 8 we came up with and debated those issues and
 9 reached consensus and that kind of thing.
 10 Q. Are Mr. Zatkow's views also
 11 included in your expert reports?
 12 A. No. His views are communicated to
 13 me orally and I took them into consideration in
 14 forming my opinions. I don't believe he would
 15 disagree in any respect with any of the opinions
 16 expressed in the report.
 17 Q. Did Bill Holmes and John Barron
 18 play a similar role working with you on this
 19 engagement, a similar role to Mr. Zatkow?
 20 A. No.
 21 Q. How would you describe the roles
 22 that they played?
 23 A. They got involved much later on in
 24 helping to draft the report.
 25 Q. Let me ask you about some other

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 2 A. Again, I don't know that person, I
 3 had no contact with that person. These three
 4 who I say I had no contact with are not members
 5 of our litigation services department, but would
 6 be audit staff people who we thought it would be
 7 efficient to assign some of the early digging at
 8 much lower billing rates.
 9 Q. How about Henning?
 10 A. Henning is a very senior member of
 11 the department who may have been involved in
 12 some of the discussions of the GAAP matters.
 13 Q. Does he talk with you about what
 14 was or wasn't GAAP?
 15 A. He served as a consultant, I ran by
 16 some of the accounting issues with him and
 17 wanted to see whether or not he concurred or
 18 what views he had based upon the communication
 19 made to him. He was not involved at all in
 20 reviewing any documents.
 21 Q. How about Hernandez?
 22 A. A person I don't know. Again, he
 23 probably came from the audit staff to do some
 24 lower level work.
 25 Q. How about Lesser?

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2 A. Lesser is a senior fellow who
3 worked with us in the debt compliance and the
4 CRA area.

5 Q. CRA means what, sir?

6 A. I believe it means cost rate
7 adjustments.

8 Q. Did Mr. Lesser have any background
9 in that area of accounting, to your knowledge?

10 A. I recall he had some experience in
11 health care, how extensive it is I don't recall.

12 Q. Can you describe at all to me what
13 his background is?

14 A. Yes, he was a senior partner in
15 Laventhall & Horwarth and currently had time
16 available. He had some kind of arrangement with
17 McGladrey here in New York where he was not
18 salaried and it was not taking much of his time
19 and I served with him on a state society
20 committee and had high regard for his ability
21 and asked him if he had any time to assist me on
22 a large engagement, he said he did, and I said I
23 had some discrete areas and I think I asked him
24 if he had any health care background and I think
25 he said he did. So he spent about a year

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2 working with us. He is not a member of Marks
3 Paneth & Shron in any way. You asked me if
4 everyone was a member of Marks Paneth & Shron, I
5 should have said he was an independent
6 contractor to us.

7 Q. Do you know whether Mr. Lesser has
8 served as an engagement partner on a health care
9 audit previously in his career?

10 A. I don't know.

11 Q. Can you tell me anything more
12 specific about the nature of any previous health
13 care experience that Mr. Lesser may have?

14 A. No, I can't.

15 Q. Who is Mr. or Mrs. Littman?

16 A. Sherry Littman is a junior member
17 of our department, she was a senior accountant
18 at Deloitte & Touche and had been with us, has
19 been with us now maybe a year or so.

20 Q. How about Moskowitz?

21 A. Moskowitz is no longer with the
22 firm. He was a senior accountant on the audit
23 staff that we deployed on the engagement in the
24 early going.

25 Q. How about Mr. or Mrs. Paria? If

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2 that's how you pronounce it.

3 A. Dicky Paria is an economist in our
4 litigation services department, he would have
5 had very little input to the engagement.

6 Q. How about Rudsky?

7 A. Lef Rudsky is a senior in the
8 litigation services department. Again, he would
9 have had very limited input to the engagement.

10 Q. How about Sacks?

11 A. Glenn Sacks is a senior member of
12 the department, has been with me for many years
13 and we may have asked him to assist in a
14 discrete area.

15 Q. Is there any area that comes to
16 mind?

17 A. No.

18 Q. How about Schwitter?

19 A. Frank Schwitter is a, like Elliott
20 Lesser, another independent contractor to us, he
21 is a retired Arthur Andersen partner. He
22 obviously was delegated some tasks but he had
23 very little input and did not expend any hours.

24 Q. Do you know whether Mr. Schwitter
25 has any health care background?

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2 A. No, I don't.

3 Q. How about Mr. or Ms. Smith?

4 A. Stu Smith was a manager in our
5 litigation services department and he helped in
6 the review of documents and various other tasks.

7 Q. How about Stocker?

8 A. Bill Stocker is a senior technical
9 partner in the firm, not a member of the
10 litigation services department, and we ran a few
11 issues by him as well.

12 Q. Are there any issues that you can
13 recall running by him?

14 A. Yes, I ran by him the issue of the
15 appropriate reporting on consolidating
16 supplementary information, I recall
17 specifically, that's the only issue I recall
18 discussing with him.

19 Q. Finally, how about Zaydenverg?

20 A. Arcady Zaydenverg is a manager in
21 our litigation services department.

22 Q. Overall you've had a team of about
23 20 people over the last four years who were
24 associated with Marks Paneth & Shron who
25 assisted you in preparing these reports?

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A. Yes. Well I wouldn't say all of them assisted in the preparation of the report, but they assisted in the various aspects of the engagement leading up to the report.

Q. You said that you and your team have spent to date approximately 10,000 hours on this engagement. Do you know how many hours Coopers & Lybrand spent each year in auditing the financial statements of AHERF?

A. I don't recall the figure, but it was considerably less than that.

Q. I believe you told us that you billed so far about \$2,870,000 on this engagement, do you know how much Coopers & Lybrand billed AHERF each year for the audit of its financial statements?

A. I don't recall the figure, I think it was substantially less.

Q. Could you turn please to your main report. In the future when I refer to your report I'm going to be referring to this large document, the expert report of September 3. Specifically to page 2 of the front part of the report, does section C headed "Summary of

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a careful review of thousands of pages, so I can't tell you whether or not the term false or the term misleading appears in the GAAP literature.

Q. GAAP speaks, doesn't it, to whether financial statements are presented fairly?

A. They do, in conformity with generally accepted accounting principles.

Q. When you state that you formed the opinion that the financial statements of AHERF were materially false and misleading, do you mean anything different by that than to say that they were not presented fairly in your view in accordance with generally accepted accounting principles?

A. Yes, I do. There can be a violation of generally accepted accounting principles that may not have a material effect on the financial statements. As you may notice in the summary of opinions, I entitled the opinions in this section as "Violations of GAAP". In this opinion A I'm expressing the view that those violations weren't material to this '96 and '97 financial statements that

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Opinion" which goes from pages 2 to 4 set forth a summary of the opinions that you are expressing in this matter?

A. Yes, sir.

Q. Your first opinion which is called "Violations of GAAP" at the bottom of page 2 you state that "The consolidated AHERF financial statements for 1996 and 1997 were materially false and misleading", is that your opinion?

A. Yes.

Q. What do you mean by the term materially false and misleading?

A. I mean that a reader of those financial statements would get information that would cause that reader to form an opinion as to the financial position and results of operations that would be different than the real opinion in one way or another that that reader should form.

Q. Is that a term found in the literature on generally accepted accounting principles or GAAP?

A. As you know, the body of literature that comprises GAAP is quite extensive and whether or not those terms appear would require

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caused those financial statements to be materially false and misleading.

Q. Let me ask my question again with the concept of materiality added to it. When you say then in your opinion the financial statements of AHERF were materially false and misleading, do you mean to say by that anything different from saying that they were not presented fairly in all material respects in accordance with generally accepted accounting principles?

A. Yes, that opinion states that the financial statements were not presented fairly in all material respects in conformity with generally accepted accounting principles.

Q. In opinion A or GAAP opinion A I take it you are addressing the financial statements of consolidated AHERF for those two years, is that right?

A. That's correct.

Q. Have you formed any opinion as to whether the audited financial statements of AHERF as of June 30, 1995 and for the year then ended were presented fairly in all material